UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,585	02/05/2001	E. Stephen Crandall	105136.01	9273

		EXAMINER
7590	06/24/2005	SHINGLES, KRISTIE D

MR. S. H. SWORETSKY
AT&T CORP. ROOM 2A-207
ONE AT&T WAY
BEDMINSTER, NJ 07921

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/775,585	CRANDALL, E. STEPHEN
	Examiner	Art Unit	
	Kristie Shingles	2141	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 April 2005*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is

closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-7,9,10,14,16-20,22 and 23* is/are pending in the application.

    4a) Of the above claim(s) *2,8,11-13,15,21 and 24* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3-7,9,10,14,16-20,22 and 23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage

        application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

Per Applicant's Request for Continued Examination:

Applicant has amended claims 1, 14, 16 and 22.
Claims 2, 8, 11-13, 15, 21 and 24 have been cancelled.
Claims 1, 3-7, 9, 10, 14, 16-20, 22 and 23 are pending.

Response to Arguments

1.   Applicant's arguments with respect to claims 1 and 14 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3.   Claims **1, 3-7, 9, 10, 14, 16-20, 22 and 23** are rejected under 35 U.S.C. 102(e) as being anticipated by *Frerichs et al* (USPN 6,684,249).

    a.   **Per claims 1 and 14** (differ only by statutory class), *Frerichs et al* teach the method for receiving performance information over a network for generating a pseudo-live performance, the method comprising:

- detecting a need for the performance information by determining a time of a previous information reception event, detecting a status of a storage device, and accessing a profile (col.2 lines 31-37, col.3 line 66-col.4 line 57, col.6 lines 18-66, col.7 lines 1-45, col.10 lines 60-65, col.11 lines 37-42, col.13 lines 48-64 and col.15 lines 40-6; provision for accessing user profiles, detecting and storing user activity and requests, retrieving advertisements from selected storage locations, and selecting time after a previous event to insert the advertisement into the streaming audio);

- selecting a process for obtaining the needed performance information (col.6 lines 62-col.7 line 25, col.8 lines 30-40, col.9 lines 39-54 and col.13 line 33-col.14 line 52);

- executing the process for obtaining the needed performance information (col.9 lines 39-54, col.13 line 33-col.14 line 52 and col.9 lines 12-26); and

- generating the pseudo-live performance by mixing information corresponding to one or more portions of the needed performance information with other information (col.4 lines 44-56, col.7 lines 35-58, col.8 line 64-col.9 line 11, col.9 lines 27-38 and col.10 line 48-col.12 line 39).

    b.   **Per claim 3**, *Frerichs et al* teach the method of claim 1, wherein the profile indicates one or more of: a type of information desired by an end-user; a schedule of an end-user; and scheduled times at which information is transmitted by a performance transmitter (col.2 lines 21-37, col.8 lines 41-63, col.9 lines 39-54, col.14 lines 40-52 and col.15 line 40-col.16 line 23).

    c.   **Claim 16** is substantially similar to claim 3 and is therefore rejected under the same basis.

d.   **Per claim 4,** *Frerichs et al* teach the method of claim 1, wherein the selecting a process comprises determining whether a performance transmitter can receive an information request (col.10 lines 25-44 and col.11 lines 22-53).

e.   **Claim 17** is substantially similar to claim 4 and is therefore rejected under the same basis.

f.   **Per claim 5,** *Frerichs et al* teach the method of claim 4, wherein the determining whether a performance transmitter can receive an information request comprises one or more of: transmitting a query signal to the performance transmitter; passively receiving a signal from the performance transmitter; and accessing a profile (col.10 lines 24-53 and col.11 line 25-col.12 line 17).

g.   **Claim 18** is substantially similar to claim 5 and is therefore rejected under the same basis.

h.   **Per claim 6,** *Frerichs et al* teach the method of claim 4, further comprising: generating an information request; and transmitting the request to the performance transmitter via the network (col.3 line 66-col.4 line 43, col.10 lines 24-53 and col.11 line 25-col.12 line 17).

i.   **Claim 19** is substantially similar to claim 6 and is therefore rejected under the same basis.

j.   **Per claim 7,** *Frerichs et al* teach the method of claim 1, wherein the selecting a process comprises determining an appropriate time to receive information from a performance transmitter (col.6 line 62-col.7 line 66, col.8 lines 41-63, col.13 line 48-col.14 line 39 and col.16 lines 10-30).

k.   **Claim 20** is substantially similar to claim 7 and is therefore rejected under the same basis.

l.   **Per claim 9**, *Frerichs et al* method of claim 1, wherein the step of generating the pseudo-live performance comprises: retrieving the other information; decoding one or more commands of the other information; and performing one or more tasks instructed by the commands (col.3 line 66-col.4 line 56, col.6 lines 3-51, col.7 line 6-col.8 line 67, col.9 line 12-col.10 line 65 and col.15 line 40-col.16 line 41).

m.   **Claim 22** is substantially similar to claim 9 and is therefore rejected under the same basis.

n.   **Per claim 10**, *Frerichs et al* method of claim 9, wherein the one or more commands includes one or more of programming commands that execute a software program, housekeeping commands that load, delete, change or overlay stored information, and performance commands that reproduce stored information from one or more specified locations of a storage device (col.3 line 66-col.4 line 56, col.6 lines 20-51, col.7 lines 6-64, col.9 line 2-col.10 line 65, col.11 lines 22-65 and col.13 lines 48-64).

o.   **Claim 22** is substantially similar to claim 10 and is therefore rejected under the same basis.

Conclusion

4.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: *Chaddha* (USPN 6,345,293), *Binder* (USPN 6,513,052) and *Swix et al* (USPN 6,718,551).

5.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie Shingles whose telephone number is 571-272-3888. The examiner can normally be reached on Monday-Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kristie Shingles
Examiner
Art Unit 2141

kds

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER